

E-002/CG-88-491 Order Resolving a Dispute with Northern States
Power Company

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Darrel L. Peterson
Cynthia A. Kitlinski
Norma McKanna
Patrice M. Vick

Chair
Commissioner
Commissioner
Commissioner

In the Matter of the Petition of
Rosemount Cogeneration Joint
Venture, Biosyn Chemical
Corporation, and Oxbow Power
Corporation for an Order
Resolving a Dispute with
Northern States Power Company

ISSUE DATE: January 7, 1991
DOCKET NO. E-002/CG-88-491
NOTICE AND ORDER FOR HEARING

PROCEDURAL HISTORY

On June 18, 1990, Biosyn Chemical Corporation (Biosyn), Oxbow Power Corporation (Oxbow) and Rosemount Cogeneration Joint Venture (together, the Joint Venture) filed a Motion for Order Directing Compliance with Previous Order to Pay Costs, Disbursements, and Reasonable Attorneys' Fees. In that filing the petitioners requested the Commission's enforcement of its Orders dated May 11, 1989 and August 9, 1989, in which the Commission awarded attorneys' fees from NSP to the petitioners following a cogeneration contract dispute.

In an Order dated January 7, 1991, the Commission found that material facts regarding attorneys fees were in dispute and that the matter should be referred for contested case proceedings. The Commission stated that the determination of attorneys' fees would be referred to the Office of Administrative Hearings for contested case proceedings by separate Order.

FINDINGS AND CONCLUSIONS

I. Jurisdiction and Referral for Contested Case Proceedings

The Commission has jurisdiction over the award of attorneys' fees following the determination of cogeneration contract disputes under Minn. Stat. § 216B.164, subd. 5.

The Commission finds that it cannot determine, on the basis of the record before it, the amount of attorneys' fees to be awarded to the Joint Venture. That determination turns on specific facts which are best developed in formal evidentiary proceedings. The Commission will therefore refer the matter to the Office of Administrative Hearings for contested case proceedings.

II. Issues to be Addressed

The parties shall address the following issues in the course of contested case proceedings:

1. The number of issues or claims determined by the Commission in its May 11, 1989 Order;
2. Whether or not a common core of facts links some or all of the issues decided in the May 11 Order;
3. Whether the hours spent by the Joint Venture's counsel in representation were reasonable in number;
4. Whether any of the hours submitted by the Joint Venture were spent on related litigation and were unnecessary to determination of the dispute before the Commission;
5. A reasonable fee for representation before the Commission, and whether a national or local fee should be adopted.

III. Procedural Outline

Administrative Law Judge -- The Administrative Law Judge assigned to this case is John W. Harrigan. His address and telephone number are as follows: John W. Harrigan, Administrative Law Judge, 1900 Hennepin Ave. Minneapolis, Minnesota 55403; (612) 872-0222.

Hearing Procedure -- Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62 (1990); the rules of the Office of Administrative Hearings, Minn. Rules, parts 1400.5100 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7830.0100 to 7830.4400. Copies of these rules and statutes may be purchased from the Documents Section of the Department of Administration, 117 University Avenue, St. Paul, Minnesota 55155, (612) 297-3000.

Under these rules parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing. Failure to appear at the hearing may result in facts and issues being resolved against the party who fails to appear.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions. They should take note that any material introduced into evidence may become public data unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2 (1988).

Any questions regarding discovery under Minn. Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minn. Rules, part 1400.5900 should be directed to Rosellen Condon, Special Assistant Attorney General, 780 American Center Building, St. Paul, Minnesota 55101 (612) 296-9644.

The times, dates, and places of evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and the parties.

Prehearing Conference -- A prehearing conference, which may be conducted by telephone, will be scheduled by the Administrative Law Judge. The Office of Administrative Hearings will notify all parties of its time, date, and place.

Parties and persons intending to intervene in the matter should attend the conference, prepared to discuss time frames and scheduling. Other matters which may be discussed include the locations and dates of hearings, discovery procedures, and similar issues.

Ex Parte Communications -- Restrictions on ex parte communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. Rules, parts 7845.7300-7845.7400, which all parties are urged to consult.

ORDER

1. A contested case proceeding shall be held to determine the amount of attorneys' fees to be awarded the Joint Venture pursuant to the Commission's May 11, 1989 and August 9, 1989 Orders.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)

ATTACHMENT A

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
Fifth Floor, Flour Exchange Building
310 South Fourth Avenue
Minneapolis, Minnesota 55415

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
780 American Center Building
160 East Kellogg Boulevard
St. Paul, Minnesota 55101

In the Matter of the Petition of	MPUC Docket No. E-002/CG-88-
Rosemount Cogeneration Joint	491
Venture, Biosyn Chemical	
Corporation, and Oxbow Power	OAH Docket No.
Corporation for an Order	
Resolving a Dispute with	
Northern States Power Company	<u>NOTICE OF APPEARANCE</u>

Date of Hearing:

Name and Telephone Number of Administrative Law Judge:

Judge John W. Harrigan
(612) 872-0222

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER:

SIGNATURE OF PARTY OR ATTORNEY: _____

DATE: _____